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The African Elephant, Africa, and CITES: The Next Step

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Conservation is a state of harmony between men and land.[1]

I. INTRODUCTION

For decades, international trade in wildlife and endangered species has been an extremely lucrative business. Millions of animals suffer and die each year at the hands of man, often because of human greed, ignorance, and vanity. The World Wildlife Fund has estimated world trade in animals and their products to have a value of $5 billion.[2] This expansive international market for animals led to drastic declines in the populations of many species, including such exotic animals as the rhino, leopard, tiger, and African elephant. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) protects wildlife from the exploitation often found in the international wildlife trade. Drafted in 1973, CITES came into force in 1975 with ten Member States,[3] and now has 115 Members.[4]

As demand, prices, and illegal poaching continued to rise, the Members of CITES moved the African elephant to appendix I of CITES in October 1989, in an effort to diminish an ivory trade blamed for taking elephant populations to dangerously low levels.[5] This action gave the African elephant the most protected status under CITES and effectively banned all commercial trade in the species. The action was vociferously opposed, especially by southern African countries, which had actually experienced

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1. ALDO LEOPOLD, A SAND COUNTY ALMANAC 207 (1949).

2. DAVID S. FAVRE, INTERNATIONAL TRADE IN ENDANGERED SPECIES: A GUIDE TO CITES at xviii (1989).

3. *Id.* at xvii.

4. *A Look at CITES*, CBSG NEWS, May 1993, at 22.

5. Dennis McAuliffe, Jr., *U.N. Conference Bars Ivory Imports*, WASH. POST, Oct. 17, 1989, at A13. *See infra* notes 21-28 and accompanying text for discussion of appendix I of CITES.

elephant population *increases* in recent years.[6] These opponents of the appendix I listing (and the ivory ban that came with the listing) claimed that their conservation systems, which included strict enforcement regimes to protect against poaching, allowed for both adequate population levels of elephants and a controlled ivory trade. Nevertheless, the listing and ban took effect in January 1990.[7]

Today, elephant populations have substantially increased in most countries and illegal international trade in elephant ivory has decreased to minimal levels. While western conservationists and eastern African countries claim that the ivory ban should remain, the southern African countries argue that the ban should be lifted so that locals would have an economic "stake" and, thus, an incentive to conserve elephant populations. This Note espouses the position of the southern African countries, and proposes a solution to this conflict—a strictly controlled ivory trade based on a CITES-supervised "Ivory Exchange."

Part II of this Note discusses the general structure of CITES and the manner in which its listing and regulatory scheme govern the international wildlife trade. Part III summarizes failed efforts to control the ivory trade that decimated African elephant populations in eastern Africa before CITES Members placed the elephant on appendix I. Part IV discusses how uncontrolled elephant population growth causes conflicts with Africa's exploding human population while damaging Africa's diverse ecosystems. Part IV then compares the ivory trade prohibition stance of eastern African countries to the controlled ivory trade and sustainable management position of the southern African countries, concluding that a sustainable management system that gives Africa's people a stake in conservation is a better route for both Africa's people and its elephants. Part V proposes a plan, a CITES-based "Ivory Exchange," that will allow for a strictly controlled ivory trade while ensuring sustainable African elephant populations.

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6. *See* McAuliffe, *supra* note 5, at A13 (noting the immediate criticism of the ban by five southern African countries). For example, Zimbabwe has been very critical of the ban, especially in light of the fact that its elephant population increased from 32,000 to 52,000 in the twenty years prior to the ban. *See* Edward Ricciuti, *The Elephant Wars*, WILDLIFE CONSERVATION, Mar./Apr. 1993, at 16.

7. Ricciuti, *supra* note 6, at 16, 18, 30.

II. CITES—HOW DOES IT WORK?

A. "Trade" in "Specimens"

CITES regulates the trade of species listed in its three appendices. Under CITES, "trade" is any export, import, or re-export of a specimen.[8] "Trade" encompasses a broad geographical meaning, including any situation in which a specimen crosses international borders; it is not necessarily limited to the movement of goods for profit.[9] Re-export simply means the export of any specimen that has previously been imported.[10] "Specimen" is defined as any animal, whether dead or alive, or any "readily recognizable part or derivative thereof."[11] Thus, a specimen may be a live elephant en route to a zoo in a foreign country, or an ivory tusk pulled from an elephant killed illegally by poachers.

B. CITES' Focus and Functioning

The focus of CITES is not on the protection of habitat or wildlife management, but rather on specific threats to species, such as destruction and removal of individual animals and plants from their natural habitat for commerce, entertainment, sport, or other human interest.[12] Thus, unlike the Endangered Species Act in the United States, which provides for extensive protection of an endangered species' habitat,[13] CITES concentrates exclusively on protecting individual animals, not their surroundings. This focus on individual animals crossing geographical borders is grounded in a reliance upon customs officers across the world who make border checks for illegal transport of wildlife products across international borders.[14]

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8. Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, art. I(c), T.I.A.S. No. 8249, at 1091, 993 U.N.T.S. 243, 245 [hereinafter CITES].

9. FAVRE, *supra* note 2, at 25.

10. CITES, *supra* note 8, art. I(d), T.I.A.S. No. 8249, at 1090-91, 993 U.N.T.S. at 245.

11. *Id.* art. I(b), T.I.A.S. No. 8249, at 1090, 993 U.N.T.S. at 245. The present lack of a workable definition for "readily recognizable part or derivative thereof" has been especially problematic in giving guidance toward discerning illegal trade from legal trade. *See* FAVRE, *supra* note 2, at 19.

12. FAVRE, *supra* note 2, at 30.

13. *See* Endangered Species Act of 1973 § 4, 16 U.S.C. § 1533 (1988) ("critical habitat" and its protection are to be taken into account and designated when determining the extent of protection for an endangered or threatened species).

14. *A Look At CITES*, *supra* note 4, at 22-23.

The basic treaty is composed of twenty-five articles. Member States meet biennially for conferences (each is officially referred to as a Conference of the Parties to the Convention) to review the effectiveness of the Convention, and, most importantly, to discuss changes to the lists of protected species on its three appendices, which mandate the level of protection each listed species is to receive.[15]

Enforcement is the responsibility of Member States, who are to integrate CITES' mandates into their own domestic laws. Thus, to a great extent, the success of the treaty depends on the adequacy of domestic legislative enactments and the extent of enforcement in individual States.[16] In the United States, for example, the Endangered Species Act provides for Convention implementation.[17] Members are to establish management and scientific authorities; the former is responsible for granting and denying CITES export and import permits, and the latter is responsible for evaluating the possible effects of granting such permits.[18] In the United States, the Department of Interior enforces CITES through the Fish and Wildlife Service. The Wildlife Permit Office and the Office of Scientific Authority are the respective management and scientific authorities of the Fish and Wildlife Service.[19]

Member States can require even stricter controls than the controls listed in CITES.[20] In 1989, the United States and numerous countries in the European Community banned imports of ivory products. This ban took effect before CITES Member States voted later that year to move the African elephant to appendix I, effectively banning the ivory trade worldwide.[21] Regardless, CITES requires Member States to submit reports to the CITES Secretariat in Switzerland (the administrative branch of the

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15. *Id.* at 22.

16. Karl Jonathan Liwo, Note, *The Continuing Significance of CITES During the 1990s*, 15 SUFFOLK TRANSNAT'L L.J. 122, 129 (1991).

17. Endangered Species Act of 1973 § 8, 16 U.S.C. § 1537(a) (1988) (implementation); Endangered Species Act of 1973 § 9, 16 U.S.C. § 1538(c) (1988) (unlawful for any person subject to U.S. jurisdiction to engage in trade contrary to the provisions of the Convention).

18. CITES, *supra* note 8, art. IX, T.I.A.S. No. 8249, at 1103, 993 U.N.T.S. at 251; *A Look at CITES*, *supra* note 4, at 22-23; *see also* FAVRE, *supra* note 2, at 245-48. For example, scientific authorities decide whether granting a permit will be detrimental to a species.

19. Meena Alagappan, *The United States' Enforcement of CITES*, 10 N.W. J. INT'L L. & BUS. 541, 550 (1990).

20. *See A Look at CITES*, *supra* note 4, at 22.

21. Randy Simmons & Urs Kreuter, *Save the Elephant—Buy Ivory*, WASH. POST, Oct. 1, 1989, at D3.

Convention) detailing trade records, along with legislative, regulatory, and administrative measures.[22] Unfortunately, many Member States are notorious for failing to report, or for providing only partial trade records.[23]

C. Appendices Listing and Regulation

Appendix I lists those species that are most endangered. To be listed on appendix I, a species must be threatened with extinction and affected, or potentially affected, by international trade.[24] The Convention makes determinations based on *regional* population studies; to be placed on appendix I, a species need not be threatened with global elimination.[25] To trade in an appendix I species, *both* export and import permits are required.[26] Requiring both types of documentation serves as a double check on illegal trade in appendix I species. Permits for trade in these species must meet certain conditions beyond the export and import requirements: it must be shown that any action will not be "detrimental to the survival of the species," and that any specimen was not obtained illegally in the country of export.[27] Most importantly, commercial trade in appendix I species is prohibited.[28] Thus, when the Convention Members voted to move the African elephant to appendix I, they banned trade in ivory between Member States.

Appendix II lists species that are not necessarily presently threatened with extinction, but which may become so unless trade is subject to strict regulation.[29] With such a listing, CITES seeks to assure a species a viable role in local ecosystems by keeping populations throughout the species' range at levels consistent with that role, while still allowing some strictly regulated international commercial trade in that species.[30] Regulation of

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22. CITES, *supra* note 8, art. VIII(7), T.I.A.S. No. 8249, at 1101, 993 U.N.T.S. at 249-50.

23. FAVRE, *supra* note 2, at 237.

24. CITES, *supra* note 8, art. II(1), T.I.A.S. No. 8249, at 1092, 993 U.N.T.S. at 245.

25. FAVRE, *supra* note 2, at 32.

26. CITES, *supra* note 8, art. III, T.I.A.S. No. 8249, at 1093-95, 993 U.N.T.S. at 246-47. Comparable documentation is even required for trade with non-parties in specimens on any of the appendices.

27. *Id.* art. III(2-3), T.I.A.S. No. 8249, at 1093-94, 993 U.N.T.S. at 246.

28. *Id.* art. III(3)(c), T.I.A.S. No. 8249, at 1094, 993 U.N.T.S. at 246 (import permit allowed only if a management authority of the state of import is satisfied that the specimen is not to be used for primarily commercial purposes).

29. *Id.* art. II(2)(a), T.I.A.S. No. 8249, at 1092, 993 U.N.T.S. at 245.

30. FAVRE, *supra* note 2, at 41.

appendix II species requires export permits only, but CITES establishes an affirmative duty on Member States' scientific authorities to monitor population levels and exports of species listed on appendix II.[31] Thus, in terms of trade, CITES will only apply to an appendix II species when one attempts to export that species. With an appendix II listing (and the related regulations), CITES seeks to keep that species' population well above appendix I levels.[32]

At the fifth meeting of the Conference of the Parties in 1985, Member States passed a resolution that allows the "downlisting" of an appendix I species to appendix II. The resolution requires that Parties set export quotas, with each Party setting its quota at a level that will not harm the survival of the species.[33] This requires a country to engage in a more intensive and comprehensive management program than otherwise would exist under a "normal" appendix II listing.[34] Thus, an appendix II "plus" system was established.

Member States established a similar quota system for the African elephant at this same Conference—the Ivory Export Quota System (IEQS).[35] The IEQS was totally voluntary and had no binding effect on the parties.[36] While that system failed miserably to protect the elephant effectively,[37] under CITES a modified version of this downlisting is presently possible for the elephant, along with the initiation of a centralized, strictly controlled ivory trade exchange.

Finally, for appendix III listings, CITES provides for unilateral listing of a species native to a country, with no vote required from Member

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31. CITES, *supra* note 8, art. IV(2-3), T.I.A.S. No. 8249, at 1095-96, 993 U.N.T.S. at 247.

32. *Id.* art. IV(3), T.I.A.S. No. 8249, at 1096, 993 U.N.T.S. at 247.

33. FAVRE, *supra* note 2, at 51.

34. *Id.*

35. *Id.* at 127.

36. Michael J. Glennon, *Has International Law Failed the Elephant?*, 84 AM. J. INT'L L. 1, 21 (1990). Thus, Party States often exceeded their quotas or even declined to submit quotas to the CITES Secretariat, especially since other CITES parties had no legal basis under CITES for denying entry of elephant products. *Id.*

37. *See id.*

States.[38] Export permits are required, but are far less burdensome to acquire than those under appendix II.[39]

D. Problematic Provisions and Concerns

Regardless of a species' change of listing on CITES' appendices, article XXIII of the Convention allows a country to declare itself immune from the binding effects of a change in the listing of a species by taking a "reservation." Countries taking such reservations almost always have a significant economic interest in the trade of the species at issue, and usually take reservations when a species is moved to appendix I.[40] This is due, of course, to the fact that such a move bans commercial trade in that species. Once a country takes a reservation on a species, it can then trade with non-Member States and other Members who have taken the same reservation.[41]

For example, five African countries (Botswana, Burundi, Malawi, Mozambique, and Zimbabwe) immediately took reservations on the elephant when it was moved to appendix I in 1989.[42] These countries soon grudgingly withdrew their reservations, however, and chose to abide by the ban on imports mandated by the listing. This was primarily due to outside international pressure and the corresponding decline in ivory demand and prices.[43] Other species are not so lucky, however, as some countries with economic interests in newly listed appendix I species routinely take long-term reservations.[44]

The reservation provision severely undercuts the effectiveness of the Convention, especially where countries taking reservations have sizable proportions of the world's population in a particular species. Reservations allow these countries to comply with CITES only when it suits their needs,

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38. *See* CITES, *supra* note 8, art. III(3), T.I.A.S. No. 8249, at 1093-94, 993 U.N.T.S. at 246 (appendix III shall include all species which any Party identifies as subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other Parties in the control of trade).

39. FAVRE, *supra* note 2, at 141.

40. *See* Gary D. Meyers & Kyla S. Bennett, *Answering "The Call of the Wild": An Examination of U.S. Participation in International Wildlife Law*, 7 PACE ENVT'L L. REV. 75, 104 (1989).

41. *See* CITES, *supra* note 8, art. XXIII, T.I.A.S. No. 8249, at 1116, 993 U.N.T.S. at 257.

42. McAuliffe, *supra* note 5, at A13.

43. *See generally* Brian Child, *A Perspective from Zimbabwe: The Elephant as a Natural Resource*, WILDLIFE CONSERVATION, Mar./Apr. 1993, at 60.

44. *See* Meyers & Bennett, *supra* note 40, at 104 (Japan has repeatedly entered reservations for whales listed on appendix I).

and to legally exempt themselves when the economic incentive is present.[45] Countries taking reservations are not only exempt from the permitting system of CITES, but also have no obligation to provide the Secretariat with data on trade in species on which they have taken reservations because they are deemed to be non-Members with respect to those species.[46] The reservation provision is, however, a safeguard provision of compromise that serves to keep Members (who otherwise would not have entered into the treaty) in the Convention. Unfortunately, such exemption provisions are essentially a fact of life for many international treaties concerned with the conservation of wildlife.[47]

Other problems with CITES are the "personal and household effects" exemption[48] and the lack of a workable definition for "readily recognizable part or derivative" of an animal.[49] The fact that the phrase "personal and household effects" is not defined in CITES has permitted some countries to be quite liberal in their interpretations, while others strictly construe the phrase.[50] In any case, CITES' failure to define "personal and household effects" results in inconsistent enforcement. In a related way, because the language "readily recognizable part or derivative" has not been clearly defined, CITES has been construed as governing only raw ivory, not worked ivory.[51] This lack of clarity has been used to the benefit of ivory-producing countries and, especially, intermediary trading countries, where ivory is quickly and superficially carved to circumvent the constraints of CITES regulations.[52]

Finally, domestic enforcement of CITES regulations is sometimes woefully inadequate. For example, in the late 1970s, TRAFFIC, a program of the World Wildlife Fund that monitors international trade in animals and

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45. *Id.*

46. SIMON LYSTER, INTERNATIONAL WILDLIFE LAW 263 (1985). Although the Fourth Conference of the Parties to the Convention *recommended* that parties with reservations treat the species as if there were no reservation for the purposes of supplying population data, it is not known how well Member States have responded to this request. *See* FAVRE, *supra* note 2, at 324.

47. *See* LYSTER, *supra* note 46, at 262. In article 5(3) of the International Convention for the Regulation of Whaling, for example, a Member State may take an "objection" (nearly identical to a reservation under CITES) within 90 days of the notification of the listing of a species on its "Schedule" (list) of protected species. *Id.* at 27.

48. CITES, *supra* note 8, art. VII(3), T.I.A.S. No. 8249, at 1099-1100, 993 U.N.T.S. at 249.

49. *See* CITES, *supra* note 8, art. I(b)(ii), T.I.A.S. No. 8249, at 1090-91, 993 U.N.T.S. at 245.

50. LYSTER, *supra* note 46, at 258. *See also* FAVRE, *supra* note 2, at 180.

51. Glennon, *supra* note 36, at 12.

52. *Id.* at 22.

plants, conducted an experiment in an effort to assess the expertise of customs officials in CITES nations:

> TRAFFIC officials declared or displayed a cactus to customs officials in several countries, including the United Kingdom, the Soviet Union, Switzerland, Germany, Sweden, Denmark, and the United States. Despite the fact that virtually all cacti are protected in some fashion under CITES, no questions were asked by officials in any of these countries about the species of the plant or its origins.[53]

The exceptions to this were in the United States and Soviet Union, where confiscation either occurred or was threatened; however, the rationale was not related to possible CITES violations, but rather to health regulations.[54]

III. THE FAILED BATTLE AGAINST IVORY TRADE: PRE-APPENDIX I

A. The 1980s: A Decade of Massacre in the East, Successful Management in the South

In the decade prior to its appendix I listing, the African elephant population declined at an alarming rate, mostly at the hands of poachers. Between 1979 and 1989, the number of elephants Africa-wide was cut in half, to no more than 600,000 animals.[55] Some countries' populations were especially devastated by poachers—in Kenya, from 1973 to 1989, the elephant population plunged from 167,000 to 16,000.[56] Some sources went as far as to suggest in 1989 that the elephant would be extinct by 2000.[57] There were numerous factors contributing to this decline: increased poaching for ivory; encroachment of human development, which led to losses of the elephant's habitat (and a resulting constriction of its range in most

53. John B. Heppes & Eric J. McFadden, *The Convention on International Trade in Endangered Species of Wild Fauna and Flora: Improving the Prospects for Preserving Our Biological Heritage*, 5 B.U. INT'L L.J. 229, 239 (1987).

54. *Id.*

55. Ricciuti, *supra* note 6, at 16.

56. *Id.*

57. Alagappan, *supra* note 19, at 543.

countries); persistent licensed hunting; and the effect of tourism on elephant behavior patterns.[58]

Of the various factors leading to the decline of elephant populations, poaching for ivory was far and away the predominant problem.[59] The 1980s saw astounding decreases in African elephant populations, as the ivory market, with drastic increases in demand and prices, flourished. The United States and Japan were the greatest final importers,[60] as an inverse ratio developed between elephant populations and ivory prices.

Just as alarming as the drops in elephant numbers were the methods by which poachers killed. Automatic weapons and rocket-fired grenades were common "tools" used in the poaching trade.[61] Some primitive poachers used methods as crude and cruel as killing elephants with spears, after slowing them by slashing their hamstring muscles.[62] Also alarming is the evidence that the illegal ivory trade helped to fund guerrilla movements in the various African civil wars of the 1980s.[63]

Some countries fared better than others in battling poachers. Kenya's failure to combat poachers effectively during the 1980s led to its decimated elephant populations. At one point, Kenyans, overwhelmed by poacher firepower, requested helicopter gunships, spotter planes, transporters, and automatic weapons from Great Britain for new, paramilitary anti-poaching units.[64] Prior to 1989, however, the anti-poaching forces of Kenya and its east African neighbors were either simply inept in their efforts or corrupt in the face of the lucrative ivory trade to prevent poaching.[65] As Kenya became increasingly serious in its anti-poaching efforts, it was readily apparent that the concurrent decline in poaching was not related solely to the drop in demand for ivory brought on by the ivory ban, but rather was

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58. Glennon, *supra* note 36, at 2-4; *see generally* Ricciuti, *supra* note 6, at 16.

59. Glennon, *supra* note 36, at 3.

60. *Id.* at 20.

61. *Id.* at 4 n.37. Mortar shells became a common sight next to the carcasses of elephants with their tusks ripped out. *See* IAIN & ORIA DOUGLAS-HAMILTON, BATTLE FOR THE ELEPHANTS 224 (Brain Jackman ed., 1992).

62. Marilyn Achiron & Roy Wilkinson, *Africa: The Last Safari?*, NEWSWEEK, Aug. 18, 1986, at 40, 40-42.

63. Glennon, *supra* note 36, at 19.

64. Eric Ransdell, *Heavy Artillery for Horns of Plenty*, U.S. NEWS & WORLD REP., Feb. 20, 1989, at 61, 64.

65. *See Saving the Elephant: Nature's Great Masterpiece*, THE ECONOMIST, July 1, 1989, at 15, 16.

equally the result of Kenya's tougher attitude regarding poaching.[66] This new get-tough policy has helped Kenya's elephant populations to rebound, with an increase of over 10,000 animals since 1989.[67]

Southern African countries have a history of aggressive anti-poaching policies, along with effective management policies that closely monitor the balance of populations in various areas to protect against overcrowding. Zimbabwe, for example, has taken a hard line against poaching for decades.[68] Elephant populations there have increased from 32,000 in 1960 to 52,000 in 1989 to over 70,000 as of mid-1993.[69] This aggressive anti-poaching enforcement policy has not stopped with the advent of the ivory ban and the resulting decline in demand for ivory.[70]

B. Why Poaching and the Illegal Ivory Trade Flourished Under CITES

Poaching and the illegal ivory trade flourished under CITES for a number of reasons. One difficulty encountered while the African elephant was listed on appendix II was that of discerning legal ivory from illegal ivory in granting permits. As demand for and trade in ivory increased, ivory "laundering" States, or *entrepôts*, became important figures in enhancing the marketability of illegal ivory. These *entrepôts* were (and, to a lesser extent, still are) essentially way stations where ivory was worked and its origin easily concealed before it was sent to final ports[71]; thus, the illegally procured raw ivory was "laundered" as it became a piece of worked ivory, and therefore was no longer subject to CITES. One of the most prolific of these *entrepôts* during the 1980s was Burundi (also one of the smallest countries in Africa). It was an exit point for many tons of ivory, often in blatant disregard of CITES mandates.[72] Burundi routinely and blatantly lied about the origin of its ivory to hide the fact that it had illegally received raw ivory. For example, for many years Burundi had only one elephant; in

66. *See When is Culling the Animal not Killing the Animal?*, AFRICA REP., May/June 1992, at 10 (citing a World Wide Fund for Nature study of six African countries, including Kenya, attributing the decrease in poaching to tougher policies implemented by local authorities).

67. Ricciuti, *supra* note 6, at 16. With a policy against poachers of "shoot to kill," one four-month offensive by Kenyan anti-poaching units led to the deaths of 30 poachers. *Id.*

68. *Id.*

69. *Id.*

70. *See generally Ivory Dealer Killed in Zimbabwe*, TRAFFIC BULL., July/Aug. 1993, at 9.

71. Glennon, *supra* note 36, at 19.

72. FAVRE, *supra* note 2, at 136.

1986, this single animal somehow managed to produce 23,000 tusks, all carefully documented as originating in that country.[73]

In addition, ivory-producing countries set their "sustainable yield" of elephant quotas at ridiculously high levels under the pre-appendix I Ivory Export Quota System.[74] The requirements of the IEQS simply became procedures for these States to notify CITES of the number of tusks they planned to export; quotas often far exceeded what many conservationists considered sustainable yields.[75] Further, even if a country was serious about its quotas, it often was not as serious about preventing poaching; underfunded and underequipped enforcement officers were often outgunned by poachers.[76]

C. The Elephant Reaches Appendix I

As the fate of the elephant grew bleaker, especially in east African countries, there was an imminent need for some type of drastic action. Kenya and its neighbors began calling for an ivory ban in the late 1980s, and actively recruited western support for this position.[77] July 18, 1989, saw the pinnacle of these efforts to gain public backing for an ivory ban. Kenya's President, H.E. Daniel Arap Moi, set ablaze a stockpile of several thousand tusks valued at approximately $3 million.[78] After several individual countries (including the United States) banned ivory imports, the ivory bonfire was an essential part of the final push that led to the appendix I listing at the end of that year. The ivory ban cause became so popular that the demand and price of ivory dropped dramatically even before the Convention voted to move the African elephant to appendix I.[79] Because of the ban and more aggressive anti-poaching forces, ivory prices plummeted from $140 per pound in April 1989, to less than $5 per pound

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73. *Saving the Elephant*, *supra* note 65, at 17.

74. Glennon, *supra* note 36, at 21; *see supra* notes 35-37 and accompanying text.

75. *Id.* In 1986 CITES authorized the export of over 108,000 tusks representing over 50,000 elephants—ten times what some conservationists regarded as Africa's sustainable yield. *Saving the Elephant*, *supra* note 65, at 16.

76. Glennon, *supra* note 36, at 21.

77. Ricciuti, *supra* note 6, at 18.

78. Richard Leakey, *A Perspective From Kenya: Elephants Today and Tomorrow*, WILDLIFE CONSERVATION, Mar./Apr. 1993, at 58.

79. *The Price of a Tusker*, THE ECONOMIST, Oct. 14, 1989, at 19-20.

in April 1990.[80] Poaching similarly decreased, as the number of illegally killed elephants fell dramatically: from hundreds per year in the 1980s, to thirty-six in 1990, and to seventeen in 1991.[81]

Many economists predicted that the ban would have little effect on the ivory trade; some even predicted that the ban would have a detrimental effect on the elephant, as demand would turn even more to the black market, which already made up three-quarters of the trade.[82] This obviously has not been the case in the few years since the ivory ban took effect. Demand was quashed to a large extent not just by the ban on the ivory trade, but by a sense of moral outrage in many countries brought about by massive global publicity. It has been estimated that more than 850 million people saw news of Kenya's ivory bonfire on television or in magazines and newspapers.[83] For western governments, it became a political issue.[84] Momentum quickly developed against the use of ivory, and the western consensus against the trade gave the east Africans' cry for an ivory ban a sense of "global legitimacy." As the elephant populations recover, however, this global fervor against ivory may wane. And, as the same economists who warned against the ban have noted, the decline of the ivory trade may just be a short-run result—as Africans and the elephants continue to compete for arable land. In the long run, Africans may see less and less reason for effective conservation.[85] While the ivory controversy may have killed demand in the United States and Europe (these countries grew to consider ivory socially unacceptable), some economists predict that new demand may develop in countries less enthusiastic about conservation, such as various industrialized countries in Asia, where ivory consumption was increasing prior to the ban.[86]

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80. Leakey, *supra* note 78, at 59.
81. *Id.*
82. *The Price of a Tusker*, *supra* note 79, at 20.
83. Leakey, *supra* note 78, at 58.
84. *Id.*
85. *See generally The Price of a Tusker*, *supra* note 79.
86. *See* EDWARD BARBIER ET AL., ELEPHANTS, ECONOMICS AND IVORY 8-10 (1990); *The Ivory Paradox: Killing the Trade in Tusks Could Wipe Out the Elephant, Too*, THE ECONOMIST, Mar. 2, 1991, at 16.

IV. TODAY'S DILEMMA: EAST VERSUS SOUTH; PROHIBITION VERSUS CONTROLLED TRADE AND SUSTAINABLE MANAGEMENT

A. Too Many Elephants?

Conflicts between humans and elephants in Africa are reaching new heights—not because of ivory, but rather because of the increase in elephant numbers across the continent. As human development encroaches upon elephant habitat, and as Africa becomes increasingly agricultural, the elephant's habitat and range greatly decreases in size.[87] As Africa's human population continues to explode,[88] farmers' competition with the elephant intensifies. The elephant's combination of incredible size and intelligence makes this animal especially troublesome to farmers attempting to protect their crops.[89] Elephants and humans come in contact more often as both populations increase, sometimes with fatal results. Kenyan newspapers document the fact that some farmers are afraid to harvest their crops because of the threat of elephants.[90] In fact, from 1982 to 1989, elephants killed 500 Zimbabweans.[91]

Therefore, many Africans have a view of elephants that is fundamentally different (often negative) from that of the rest of the world. The social behavior and human-like characteristics of elephants elicit high levels of empathy in westerners.[92] In contrast, one Kenyan Masai tribesman, who was forced to abandon his people's traditional nomadic ways in favor of farming outside Amboseli National Park, when asked what to do about the problems caused by the elephants, replied, "Kill them."[93] Many Africans see elephants as dangerous competitors who drink water supplies, destroy

87. Glennon, *supra* note 36, at 2.

88. *See* Ricciuti, *supra* note 6, at 18 (noting that Kenya's population is growing twice as fast as that of other developing nations).

89. *Id.* at 19 (noting that if elephants were not so smart, they would be easier to keep out of farmlands, and that as a result of their size, the damage that the elephants do to crops is devastating to many African farmers).

90. *Id.* at 18.

91. *Id.*

92. Elephants live in close-knit families, communicate with each other with low-frequency calls that carry for miles, and seem to exhibit affection and comfort by touching each other in various ways. *See* Glennon, *supra* note 36, at 1-2. Further, elephants seem to experience distress when other elephants die and have been seen touching, even fondling, the remains. Ricciuti, *supra* note 6, at 28.

93. *Id.* at 16.

trees, and trample crops.[94] Some critics of the prohibition of trade in elephant products, particularly in ivory, warn that as conflicts between Africans and elephants increase, Africans may begin to see less sense in taking a "hands off" attitude while losing out in the profits that a controlled ivory trade might bring to local people.[95] Without a stake in conserving the elephant, initiative to conserve it within the general populace may die out in some African countries. In the long run, the ivory ban may be the downfall of the elephant.

The increase in elephant numbers has stressed not only native-elephant relations; it has stressed Africa's ecosystems as well. When their numbers are at healthy levels, elephants play an important role in maintaining a mosaic of habitats in forests, woodlands, and savannas; where they exist in high densities, they can be destructive to an ecosystem, as is the case in many areas where elephant populations have rebounded strongly.[96] Elephants can destroy woodlands. While this opens up savannas for grazing animals, it also reduces habitat for impalas, giraffes, and other browsers, as well as for baboons.[97] Extensive damage to ecosystems could also mean extensive damage to Kenya's tourist industry. Thus, Kenyans, even with their stance against the ivory trade, have a vested interest in keeping elephant populations at manageable levels.

Notwithstanding the CITES ivory ban, by which all five southern African countries who originally took reservations now abide, these southern African States continue sustainable management practices such as "culling."[98] The rationale behind culling is to kill elephants to save elephants and their habitat.[99] Meat from culling often goes to local people.[100] Prior to the appendix I listing, these countries earned millions

94. *See* Simmons & Kreuter, *supra* note 21.

95. *See id.* (arguing that in countries such as Tanzania and Kenya, where over 80% of the people live off agriculture and human populations are rising at 3-4% each year, few families are willing to endure hunger so an elephant can live to *perhaps* help tourist revenues that fail to trickle down to them).

96. *See* Ricciuti, *supra* note 6, at 22.

97. *Id.* at 24. For example, the famous Treetops in Kenya, an animal-viewing hostelry built on gigantic stilts and once enveloped by forest, now stands conspicuously in a large open area. *Id.* at 25.

98. Culling is the term for the killing of groups of elephants to keep populations under control. Elephants are tranquilized from helicopters, and ground crews then shoot them in the brain. Zimbabwe has culled for 30 years. *Id.* at 26.

99. *Id.*

100. *Id.*

of dollars in legal trade in elephant products (mostly in ivory) derived from culling, while still managing increases in populations.[101]

B. Prohibition versus Controlled Trade in Ivory

At the 1992 meeting of the Conference, the southern African countries argued for a compromise that would allow for limited resumption of trade in meat and skins. Under the terms of the proposed compromise, the southern African countries agreed to accept the ivory ban until the next CITES meeting in 1994, thus allowing a reasonable period of time to implement a trading system that would not encourage any illegal trade in ivory.[102] These countries later dropped the proposal as a result of intense pressure from western countries and east African countries who support the ban. Southern African countries remained bitter, however, and portrayed the western efforts as a group of developed nations imposing their will on developing nations.[103] Those sympathetic to countries who have successfully increased their elephant populations while maintaining trade see the continued ivory ban as the "easy way out" for African countries whose conservation efforts have been less successful: the ban functions as a substitute for effective law enforcement at the national level, covering up decades of mismanagement and corruption.[104]

Supporters of the prohibition rationale, such as Richard Leakey (former director of Kenya's wildlife conservation efforts[105]) and his western constituents, point to the success of the ivory ban as the predominant reason for the elephant's recovery in east Africa.[106] Their main fear is that *any* ivory trade will refuel demand and encourage illegal poaching. Staunch

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101. For example, Zimbabwe earned more than $13 million from elephant products during the 1980s, and its elephant population increased during that decade. *See id.*

102. *When is Culling the Animal Not Killing the Animal?*, *supra* note 66.

103. *Id*; *see also* Child, *supra* note 43, at 61.

104. *See* Simmons & Kreuter, *supra* note 21.

105. Leakey quit in January 1994 amid a cloud of controversy after powerful Kenyan politicians called for his resignation—their accusations, in what many see as a power struggle for the benefits of Kenya's tourism proceeds, included racism, corruption, and mismanagement. He recently coordinated Kenya's successful hard-line, paramilitary stance against poachers that has essentially eradicated poaching from Kenya's game parks. Without his leadership, and in light of the intensifying conflict between humans and animals over land, the future of Kenyan wildlife conservation seems quite uncertain. *See* Donatella Lorch, *Noted Kenya Conservationist Resigning in a Political Storm*, N.Y. TIMES, Jan. 15, 1994, at L3.

106. *See generally* Leakey, *supra* note 78, at 58.

supporters of this position simply do not believe that there are any adequate controls in the face of an ivory trade.[107] Further, many find culling abhorrent for moral reasons, based on the inherent intelligence and social behavior patterns of the elephant.[108]

In addition, the tourism industry in Kenya is so productive that many feel locals in Kenya, unlike those in the southern African countries, do not need an economic tie to the elephant products trade to encourage the conservation of elephant populations.[109] Even Kenyans, however, realize the need to *control* these populations, as shown by the fact that Kenyan wildlife managers have considered the possibility of birth control (such as a drug similar to RU486) to regulate reproduction and fertility.[110]

Southern African countries, on the other hand, view the ban on all trade in elephant products as a waste of natural resources. As elephants continue to multiply, both their interactions with humans and the ecosystems they inhabit are placed under stress. Further, as human populations increase and Africans compete with elephants for scarce resources, locals will begin lowering elephant populations themselves if incentives for conserving elephant populations are not developed. Thus, if the elephants are not killed for ivory, they will be killed for the land they occupy.[111]

These countries believe, and I agree, that a method of "sustainable exploitation" based on ivory taken from natural deaths and management culling would benefit local people without harming the species.[112] The Communal Area Management Programme for Indigenous Resources (CAMPFIRE) in Zimbabwe serves as a model that utilizes these concepts. Communities obtain direct revenue from the proceeds of wildlife utilization in their area; thus rural landowners are given a "stake" in wildlife conservation.[113] Prior to the ban, ivory sales from culling were essentially a byproduct of this program; the revenues from sales paid for national management programs and compensated local communities for property damage caused by elephants.[114]

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107. *See id.* at 89.

108. *See* Ricciuti, *supra* note 6, at 28.

109. Revenue from tourism ("viewing use") is ten times the value of potential poached ivory exports in Kenya. BARBIER ET AL., *supra* note 86, at 18-19, 110.

110. *See* Ricciuti, *supra* note 6, at 29; Leakey, *supra* note 78, at 59.

111. BARBIER ET AL., *supra* note 86, at 107.

112. *See* Child, *supra* note 43, at 60.

113. BARBIER ET AL., *supra* note 86, at 144. *See also* Ricciuti, *supra* note 6, at 34.

114. BARBIER ET AL., *supra* note 86, at 144.

The CAMPFIRE program serves two essential goals of effective wildlife population management: 1) providing necessary revenue for national anti-poaching activities, and 2) ensuring local cooperation in conservation. Thus, poaching is combatted both from "above" and from "within." In 1992, these same communities also had $1.6 million of stockpiled, unsold ivory (at pre-ban prices), or 6.5 tons of the 27.5 tons in Zimbabwe's national ivory store.[115] Because of the trade ban, in 1992, a year of severe drought and hardship, the income of 60,000 members of CAMPFIRE was perhaps only half of what it would have been if the ivory trade had been legal.[116]

Zimbabwe's model is not the only success story of elephant management in Africa. South Africa has presented proposals that would allow ivory exports from its Kruger National Park (which contains ninety percent of its elephant population) and confer the related benefits to locals.[117] South Africa has a long tradition of strong and effective anti-poaching units and a correspondingly stable elephant population. It presently has its own control and marketing system within its boundaries, which is similar to those established in 1991 by four other southern States (Zimbabwe, Namibia, Botswana, and Malawi). This "cartel" is titled the South African Centre for Ivory Marketing,[118] and serves as the sole ivory exporting agency of its Members, selling (subject to tight controls) ivory derived from legally culled elephants. Countries allowing these cartels warn other CITES Members that expansive international trade "is warranted because it makes the costly activity of controlling the elephant populations [and poachers] economically viable."[119]

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115. Child, *supra* note 43, at 61.

116. *Id.*

117. *See* Richard Littell, *"Culling" Ivory, Saving Elephants: Relaxing the Trade Ban Can Only Help Africa's Dwindling Herds*, WASH. POST, Feb. 23, 1992, at C5.

118. Ricciuti, *supra* note 6, at 30; *When Is Culling the Animal not Killing the Animal?*, *supra* note 66, at 10.

119. *When is Culling the Animal not Killing the Animal?*, *supra* note 66, at 10.

V. A SOLUTION: CONTROLLED TRADE THROUGH AN IVORY EXCHANGE

A. The Time is at Hand for the Next Step

The ivory ban has been successful as an interim measure, but it is not a solution for effective elephant conservation across Africa. Even some original proponents of the ban suggested that the ivory trade should eventually move from the embargo model to a controlled management model—if the elephant were to "get back on its feet" in countries where its existence was threatened.[120] Even now, "Western leaders are reportedly wavering on whether or not to accept [the southern Africans' argument] that the best road to conservation is to relax the ban."[121] The time has come for such a move.

In light of the controversy and emotions sparked by the issue, CITES must take affirmative, concrete steps if such an action is to be considered "globally legitimate." To reach global legitimacy, the relaxation of the ban must have the support of the same western countries whose support for the ivory ban led to its adoption by CITES in 1989. The change in position must be explained fully to the world community as not just a move towards a free market, but rather as a move to conserve more effectively elephant populations while allowing African locals to live better in harmony with elephants.

B. A Proposed Solution

I propose the following plan for a conservation-minded, strictly regulated reopening of the ivory trade: an international "ivory exchange," administered by the CITES administration, with a central auction center in Switzerland. This location would be ideal for two reasons. First, the activities of the Exchange would fall under the close scrutiny of the

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120. Glennon, *supra* note 36, at 39. In 1989 Richard Leakey suggested that it would take five to ten years for elephant populations to reach fairly stable numbers. *Id.* at 39. That time has evidently been shortened by the success of the ban, and, to an even greater extent, by strong anti-poaching enforcement efforts in countries such as Kenya. *See* notes 66-67 and accompanying text.

121. *When is Culling the Animal not Killing the Animal?*, *supra* note 66, at 10. After the last CITES conference in November 1994, in Fort Lauderdale, Florida, however, the ban remained in effect. *See* Marla Cone, *Conflict Marks Endangered Species Treaty*, L.A. TIMES, Nov. 20, 1994, at 1. Despite some evidence of western sympathy to the southern Africans' pleadings to lift the ban, trade ban interests prevailed. *Id.*

Secretariat. Second, the CITES administrative offices can put in place both price ceilings and floors to control demand. Ivory producers and consumers would negotiate for pricing recommendations to be made to the Secretariat.

Initially, the African elephant needs to be downlisted from appendix I to the status of appendix II "plus."[122] This move would hardly be antithetical to the spirit of the CITES listing process. CITES listing and population levels are to be based on a particular species' ecological role in the ecosystems in which it is found;[123] at this point, the high densities of elephants affect ecosystems in negative ways. Under the appendix II "plus" system proposed here, if a producer State wishes to participate in the Exchange, it must set quotas and submit them to the Exchange. Further, all participating States must agree to leave their quotas subject to verification and audit, at the request of other parties. Since the treatment of the African elephant has been closely scrutinized by numerous governments and wildlife conservation groups across the globe, these entities will not hesitate to spend the time and money to take advantage of this auditing provision when a quota put forth by a producing State seems suspiciously high. Thus, one of the reasons for the failure of the IEQS—abuse of the quota system by producers—would be substantially eliminated.

The new system should retain the requirement of export permits, with the provision that such a permit must accompany every ivory shipment to the Exchange. Thus, if a shipment of ivory leaves a producer State, it must be accompanied by an export permit and go directly to the Exchange.

A marking system should be initiated for all ivory crossing international borders. Government clearing houses can be strategically located near refuges and parks in producer countries. Each tusk will be marked in some fashion to identify its origin and to protect against flow of illegal ivory in trade. "It is now possible not only to identify ivory by species of origin, but also to mark ivory tusks so that parts of lawfully taken tusks are subsequently identifiable—easily and inexpensively."[124] A few methods have proved viable in the past and may be workable in the future, including one in which each tusk is marked with an indelible hologram, and a sample

122. *See* notes 33-34 and accompanying text.
123. FAVRE, *supra* note 2, at 33.
124. Glennon, *supra* note 36, at 39.

of the same tusk is kept for isotropic analysis.[125] Any tusk reaching a point of import can be checked for an isotropic "match."

As mentioned, the gaping hole left by CITES' lack of a proper definition for "derivative of" and "readily recognizable part" of a species, which was often unscrupulously and illegally "filled" by *entrepôt* intermediary countries with a few quick hacks at a piece of raw ivory, must be closed with clear definitions. Distinguishing between raw ivory and the broad category of worked ivory must end; only those ivory items that have obviously been in the flow of trade for years, or are obviously no longer "readily recognizable" as coming from the elephant, should be allowed to escape the CITES' regulations. The Convention needs to look no further than the text of CITES for a solution, as it provides for the listing of "specified parts and derivatives" of listed animals.[126] The Parties should pass the following resolution, which can be enforced by the Exchange: worked ivory should be on a "parts and derivatives" list, and only certain listed exceptions will be exempt. For example, piano keys and intricately carved works of art such as miniature figurines could be among the articles listed as exempt from the scrutiny of CITES. These two measures, the marking system and the parts and derivative listing, would greatly undercut *entrepôts* and the black market, along with the incentives to poachers.

The Exchange itself could be set up as follows. To be a Member, consumer countries must sign exclusive agreements to purchase all ivory through the Exchange,[127] while suppliers will be strictly limited to those government entities following the quota system outlined in the appendix II "plus" listing process.[128] The effectiveness of a producer State's anti-poaching forces will also be scrutinized. For example, producers found to be abusing the quota system, perhaps after another party has audited their elephant population documentation, will be suspended or, if the abuse is serious enough, banned from the Exchange. Further, to even become

125. *See "Culling" Ivory, Saving Elephants*, *supra* note 117, at C5; *see also Clues in DNA and Isotopes Help Identify Ivory Origin*, N.Y. TIMES, Aug. 28, 1990, at C4 (describing origins of the methods to identify ivory by DNA or certain isotopes).

126. CITES, *supra* note 8, art. I(b)(3), T.I.A.S. No. 8249, at 1091, 993 U.N.T.S. at 245.

127. Thus, the new system would have the effect of requiring both import and export permits, as countries looking to purchase ivory from the Exchange would have inherently allowed such imports.

128. This agreement structure is based on a version of an ivory exchange suggested by Barbier. *See* BARBIER ET AL., *supra* note 86, at 125-26.

Members of the Exchange, producers' applications will be evaluated on the success of their sustainable management programs.

In implementing the Exchange, Parties should integrate this extensive plan into the very text of CITES. This should be done through an amendment, as opposed to a non-binding resolution (i.e., a "recommendation" of the Conference of the Parties). Resolutions often are unsuccessful since countries fail to abide by their terms (the failed IEQS[129] was part of such a resolution). Article XVII allows for amending the text of CITES. Upon written request of one-third of the Parties, the Secretariat shall call a special Conference of the Parties; an amendment will be adopted with a two-thirds vote of acceptance of the Parties.[130] If the Ivory Exchange proposal meets these requirements,[131] the Exchange will become article XXVI of CITES.

The Conference should also pass a resolution encouraging domestic systems similar to that seen in Zimbabwe's CAMPFIRE program. To get the ivory needed for the Exchange, governments should go to their local citizens. For example, governments can purchase from local communities culling rights and "retrieval" rights for elephants dying of natural causes in their area. This practice will encourage local communities to refrain not only from poaching, but will also give them the incentive to police, along with government anti-poaching units, against poachers from other areas.

Finally, a premium or tax on every sale at the Exchange will funnel money into a CITES fund. Part of this money will go to producing States to help finance the purchasing of manpower and firepower to combat poachers, as well as to fund research geared toward developing improved strategies to fight illegal trading and poaching. The remainder of the money derived from this tax will go into a general CITES fund for international elephant conservation purposes. The fund could be used for auditing the legitimacy of producer States' quotas, or even for immediate monetary aid to finance increased enforcement troops in countries having trouble with poachers at particular times.

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129. *See* FAVRE, *supra* note 2, at 127.

130. CITES, *supra* note 8, art. XVII(1), T.I.A.S. No. 8249, at 1114, 993 U.N.T.S. at 256.

131. Granted, this would be no small feat. Such a move would need much more political support than the proponents of a controlled ivory trade currently have. Further, history suggests that voting the proposal into the text of CITES would be difficult—only two such proposed amendments have been attempted, and only one became legally effective. *See* FAVRE, *supra* note 2, at 315.

Granted, lifting the ivory ban and implementing such a plan would hardly be free from criticism or possible problems. The corruption of customs officials, or even anti-poaching units, has been and always will be a concern, especially in times of political unrest. The great majority of the profits made by producer States from the Exchange should go toward elephant conservation (especially anti-poaching enforcement). While CITES can do little to control the flow of money brought back from the Exchange, it can scrutinize another, more important "bottom line"—the stability of elephant populations within producer States belonging to the Exchange. The threat of expulsion from the Exchange for abusing the quota system, and thus losing the business of consumer countries who have signed exclusive agreements to purchase from the Exchange, may be enough to cause producing States to take elephant conservation seriously.

Another concern is that lifting the ban may cause wildlife conservation groups opposed to the ivory trade to halt their financial support of conservation efforts in producer States. Even if many groups stopped giving support, which in itself seems antithetical to wildlife conservation, that revenue will be replaced by profits from the Exchange. Further, if the repeal of the ban is framed by its proponents as a long-term conservation solution to a situation growing continually more unstable as elephants and humans compete to survive, then perhaps these supporters will take a closer look at the positive possibilities.

Conversely, some may argue that if this is a step toward the market, why not go all the way? In other words, there might be a "free rider" problem in this system that could be solved by moving to an even freer market for ivory. While a local African community might gain from a culling right or "retrieval" right given to the government, the money derived from that one elephant is dispersed between the Members of the community. A poacher in the black market, on the other hand, gains the value of the whole elephant. Thus, some may suggest placing ownership rights to elephants in *individuals* to protect against the development of a black market.

Such a system is, however, highly impractical. The elephant has an incredible habitat range. An individual would have a difficult time keeping track of his or her elephants. Efforts to "ranch" probably would be fruitless due to the elephant's size and intelligence, not to mention the formidable

cost of attempting to fence in a group of elephants.[132] Further, maintaining small groups would keep elephants from dispersing and might lead to the negative effects of inbreeding.[133]

In terms of preventing poaching, a private elephant owner would require numerous employees at his disposal to police the poaching of elephants. The risk of "free riding" is also present in this situation, as those paid by the owner to protect the elephants may be tempted by the thought of gaining more profit for themselves by cooperating with poachers.

Local communities, however, could simply conserve those elephant populations that happen to be within their area at particular times, rather than making fruitless attempts at "tracking." While establishing a "stake" in conservation, the revenue to the community would be *in addition to*, not in lieu of, the income derived predominantly from agricultural pursuits. In dire times such as drought, it will be something to fall back on. Finally, economists and free market environmentalists, often the proponents of placing environmental property rights in individuals, have given rave reviews to systems such as CAMPFIRE.[134]

VI. CONCLUSION

The ivory ban has served its purpose. However, it is no longer the only, or the best, plan to save the elephant in the long run. A strictly controlled ivory trade will better serve the people of Africa by giving them a stake in conservation and allowing citizens in the local African communities to live in greater harmony with the African elephants. In the future, as both elephant and human populations grow in Africa, the battle between the two species for scarce resources will intensify. Under subsistence conditions, an environmental ethic easily gives way to the desire to survive. Giving ivory-producing countries and their citizens an economic incentive to conserve the African elephant will ensure the continued survival of both Africa's people *and* its elephants.

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132. Fencing in elephants can also lead to devastating effects for the land that is enclosed, as shown by elephant populations that have stripped the landscape in Kenya's fenced refuges. *See* Ricciuti, *supra* note 6, at 24-26.

133. *Id.* at 26.

134. *See* Terry L. Anderson, *Zimbabwe Makes Living With Wildlife Pay*, WALL ST. J., Oct. 25, 1991, at A14 (praising the effectiveness of CAMPFIRE's conservation efforts, while noting that it increases household incomes); BARBIER ET AL., *supra* note 86, at 143-46.